

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 821
HOUSE BILL 969

AN ACT TO AMEND ARTICLE I OF CHAPTER 700, SESSION LAWS OF 1947,
RELATING TO THE CHARTER OF THE TOWN OF JAMESTOWN.

The General Assembly of North Carolina do enact:

Section 1. Article I of Chapter 700 of the Session Laws of 1947 be and the same is hereby amended by adding Section 5 thereto as follows:

"Sec. 5. Eminent Domain. 1. Condemnation Procedure; Interest Acquired. The Town of Jamestown shall possess the power of eminent domain, and may acquire, either by purchase or condemnation, any land, right of access, right of way, water right, privilege, easement, or any other interest in or relating to land or water, either within or beyond the town limits, including and limited to a right of way in and across lands owned or held as right of way by a railroad or other public utility company (provided that the operation of such railroad or other public utility company may not be impaired unreasonably thereby), for any lawful public use or purpose. Unless otherwise expressly provided in the condemnation resolution, a fee simple title shall pass to the town upon the condemnation of any such interest. In any case where the owner of land to be condemned or of any interest therein is a minor, an insane person, or otherwise under any disability, any notice hereinafter required by this Article to be served upon such owner shall be served upon his guardian, and service upon such guardian shall be sufficient without service on the minor, insane person, or person under disability. Thereafter such guardian may exercise on behalf of his ward with respect to such condemnation proceeding all the powers conferred upon such person as owner. Water rights or other interests relating to water may be condemned under the procedure set forth in this Article for the condemnation of land and interests therein.

2. Effort to Purchase Not Required. It shall not be necessary to the condemnation by the town of any land or interest therein, whether pursuant to this Article or otherwise, that the town shall have attempted to acquire the needed land by grant or purchase prior to the commencement of condemnation proceedings.

3. Resolution Proposing Condemnation. (a) When any land required by the town for any purpose allowed by this Charter or the general law of the State is proposed to be condemned under the specific provisions of this Charter, the town council shall adopt a resolution which shall contain substantially the following provisions:

(1) A description of the land proposed to be condemned in fee, or the interest or easement proposed to be condemned;

(2) If there is any building or other property situated wholly or partly upon the land to be condemned, the determination of the town council as to whether the owner shall be allowed to remove such property or whether the same shall be condemned;

(3) A statement of the purpose for which said land or easement is proposed to be condemned;

(4) The name and address of the owner or owners of said land and of any other person or persons interested therein whom it is necessary to make a party of the proceedings;

(5) The name of a disinterested freeholder of the town appointed as appraiser by the town council.

(6) A notice that the owner or owners of said land, or interest therein, or a majority in interest of said owners, may, within five days after service of said resolution upon all of them, appoint one appraiser (who shall be a disinterested freeholder of the town) to represent them, the name of which appraiser shall be reported in writing to the town clerk within said five days;

(7) A notice that the appraiser appointed by the town and the appraiser appointed by the owner or owners, or if the owner or owners fail to appoint, then the two appraisers appointed by the town, shall appoint a third appraiser, and that the three thus appointed shall constitute a board of appraisers, whose duty it shall be to determine the damages and benefits which will result from the condemnation of said land and easement or interest therein;

(8) A notice of the time fixed for the first meeting of the appraisers, and that said meeting will be held upon the premises to be condemned.

(b) It shall not be necessary to institute separate condemnation proceedings against the several owners of tracts or parcels of land affected by proposed local improvements.

4. Service of Resolution Proposing Condemnation. A copy of the resolution proposing condemnation shall be personally served upon each of the owners of the land proposed to be condemned; provided, that if the resolution cannot be personally served upon any of the owners, then it may be served by publication once a week for two successive weeks in some newspaper published in the town which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the town.

5. Failure of Owners to Appoint Appraiser. If within five days after service of the resolution upon all of the owners, they or a majority in interest of them fail to appoint an appraiser and to report his name to the town clerk, the town council shall appoint a disinterested freeholder of the town to represent them.

6. Appointment of Third Appraiser; Oath. The appraiser appointed by the town council, and the appraiser appointed by the owner or owners, or if the owner or owners fail to appoint, then the two appraisers appointed by the town council, shall appoint a third appraiser, who shall be a disinterested freeholder of the town, and shall report his name to the town clerk. Each appraiser shall take an oath or affirmation that he will fairly and impartially discharge his duties as an appraiser.

7. First Meeting of Appraisers. At the time fixed by the resolution of condemnation, the appraisers shall meet on the premises proposed to be condemned. If for any reason a meeting cannot be held at the time fixed by the town council, then a meeting shall be held at another time fixed by the appraisers, in which case notice of the time and place of the meeting shall be personally served upon each of the owners of the land or easement proposed to be condemned, or if the notice cannot be personally served, it may be served by publication once a week for two successive weeks in some newspaper published in the town which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the town. The notice, whether given personally, by publication, or by posting, shall be served not less than five days prior to the date of the hearing. At the first meeting the appraisers shall view the premises affected by the proposed condemnation; and shall hear, but need not reduce to writing, any evidence as to damages and benefits that will result from the proposed condemnation presented by the owners or by the town. The appraisers may make their report at or after the hearing or they may, in their discretion, hold subsequent meetings.

8. Subsequent Meetings; When Notice Required. Subsequent meetings of the appraisers shall be held at such times and places as may be determined by them. Of such meetings no notice need be given either to the owners or to the town unless such meetings are to be public and for the purpose of hearing evidence. If held for such purpose, then unless such meeting is held at a time and place to which a former meeting of which the parties had lawful notice was adjourned, notice of the meeting shall be personally served upon all the parties, or, if such notice cannot be personally served, it may be served by publication once a week for two successive weeks in a newspaper published in the town which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the town. The notice shall be served or publication or posting thereof completed not less than five days prior to the time fixed for the meeting.

9. Determination of Damages and Benefits; Report. In determining the compensation to be paid by the town for the land or easement condemned, the appraisers shall take into consideration both the loss or damage which will result to the owners from the condemnation of the land or easement and the benefits that will result to any remainder of such land from the improvement for which the land or easement is to be condemned, the benefits to include both benefits or advantages special to the land and the benefits or advantages to the land in common with other lands affected by the improvement. The appraisers shall also take into consideration the value of any building or other property situated on the land proposed to be condemned if the owner is to be allowed to remove the building or other property, and the value thereof shall not be included in the compensation award. Having determined damages and benefits, the appraisers shall make their report to the town council, in which report the appraisers shall show separately the amount of damages, the amount of benefits, and the amount which shall be paid by the town if it finally condemns the land or easement. In the event the property condemned is subject to a recorded lease or leases, the appraisers shall apportion the award between or among the person or persons owning the fee or fees and the person or persons owning the leasehold interest or interests; but in no event shall the

total of the amounts so apportioned exceed the value of the property were it not subject to a recorded lease or leases. The report shall be sufficient if it is concurred in by two or three appraisers. In the event that no two of the three appraisers can agree upon an appraisal, three new appraisers may be appointed in the same manner as the original appraisers, and the new appraisal board shall follow the same procedure as required of the original appraisal board.

10. Action of Council on Report. Within thirty days after the report of the appraisers is submitted to the town council, the council shall determine what action it will take thereon. If the council determines to abandon the proposed condemnation, it shall adopt a resolution to that effect; but the abandonment of the condemnation shall not prevent the town council from thereafter instituting a proceeding to condemn the same land or easement. If the council determines to condemn the land or easement, it shall adopt a resolution which shall contain substantially the following:

(1) A recital that a board of appraisers has been appointed to determine the compensation to be paid for the land or easement, as provided by this Charter, and that the appraisers have submitted their report to the council;

(2) A statement of the amount of damages and benefits as fixed by the appraisers and of the compensation to be paid by the town for the land or easement condemned as fixed by the appraisers;

(3) The determination of the council as to the condemnation of the land or easement;

(4) A description of the land condemned in fee or of the easement condemned;

(5) A statement of the purpose for which the land or easement is condemned;

(6) The name of the owner or owners of the land and of other persons interested therein who were made parties to the proceeding;

(7) The determination of the council as to the time when the town will take possession of the land or easement condemned, and a direction that such premises shall be vacated by such time, and in case the owner is allowed to remove any building or part thereof or any other property on the premises, a direction that such property shall be removed before said date and that if the owner fails to remove the same within said time, the council will have the same removed and the cost thereof shall be a lien upon the remainder of the property.

11. Vesting of Title in Town. The adoption of the town council of a final resolution of condemnation, as provided in the preceding Section shall have the effect of a judgment against the Town of Jamestown for the amount of compensation fixed by the appraisers and shall vest in the town title to the land or easement condemned.

12. Appeal to Superior Court. If upon the adoption by the town council of a final resolution of condemnation, either the owner of the land or easement condemned or the town council itself is dissatisfied with the amount of the compensation to be paid for such land or easement as fixed by the appraisers, such owner or the town or both may, within ten days from the date of adoption of such resolution, appeal to the Superior Court of Guilford County. The party or parties appealing shall, within ten days, give notice of appeal to the other party by personal service if practicable and, if not, by publication of a notice one time in a newspaper published in the town which is qualified

to carry legal notices. The appeal or appeals shall not interfere with the vesting in the town of the title to the land or easement condemned or hinder the town in any way from proceeding with the improvements for which such land or easement was condemned, except that if the land or interest therein is owned by another public or quasi-public body, or by a railroad or public utility company, the vesting of title in the town shall not become effective until the court has rendered final judgment on the question of whether the condemnation by the town is in the public interest, and has determined the amount of compensation to be awarded for the condemnation, in which case the court may, in its discretion, reduce the amount of land or interest therein which it shall allow to be condemned.

13. Record upon Appeal. Upon an appeal taken by either party, the town clerk shall certify a copy of the record in the condemnation proceeding to the Superior Court of Guilford County, and such appeal shall be tried as other actions of law. The record upon appeal shall be composed of the preliminary resolution of condemnation, the oath of appraisers, the report of appraisers, the final resolution of condemnation, and the notice or notices of appeal. The record upon appeal, or any part thereof shall be competent as evidence upon the trial of an appeal.

14. Condemnation before Determination of Compensation. When, in the judgment of the town council, the public interest requires that the town enter into immediate possession of any land, it shall adopt a resolution stating such necessity and the reason therefor, and condemning the required land or easement, and providing for the determination of the compensation to be paid by the town for the land or easement. The procedure therefor with respect to determination of such compensation shall follow as closely as practicable the provisions of this Article, or of the provisions of general law concerning "Eminent Domain". This Section shall not apply to land, or interests therein, owned by another public or quasi-public body, or railroad or public utility company.

15. Registration of Condemnation Proceedings. In any case where any land or any easement therein has been or may hereafter be condemned by the town council, a copy of so much of the condemnation proceedings as may be necessary to show the land or easement therein condemned and the condemnation thereof shall be certified by the town clerk and the same, upon being probated by the Clerk of the Superior Court, or other person authorized by law to probate instruments for registration, shall be registered in the office of the Register of Deeds of Guilford County.

16. Sale or Other Disposition of Land Condemned. When any land condemned in fee by the town is no longer needed for the purpose for which it was condemned, the same may be used by the town for any other public purpose or may be sold or otherwise disposed of.

17. Removal by City of Structures on Condemned Land; Lien. When property upon which any building or other structure is wholly or partly located is condemned by the town under the provisions of this Charter or any other law, and the owner is allowed to remove such building or structure or part thereof, the town council may, after the report of the appraisers has been made, name the time within which the owner may remove the building or structure, or part thereof, and if the owner fails to remove the same within said time, the council may remove the same and the cost thereof shall be a lien upon the

remainder of said land, or such cost may be recovered by the town in any court of competent jurisdiction.

18. Procedure Not Exclusive. The condemnation procedure set forth in this Article shall not be exclusive, but shall be in addition to any other procedure provided by law.

19. Procedure Not Applicable Outside of Guilford County. The condemnation procedure set forth in Article 2 of Chapter 40 of the General Statutes of North Carolina and not the procedure set forth in this Article shall be applicable to the exercise of the power of eminent domain by the town for the condemnation of any land, right of access, right of way, water right, privileges, easement, or any other interest in or relating to land or water which is or are located outside of the geographic boundaries of Guilford County."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 14th day of June, 1961.